

ROUGH DRAFT

Site:	A.L. Taylor
Brown:	10/4
Other:	

M E M O R A N D U M

TO: File

FROM: Hugh N. Archer
Attorney

DATE: March 26, 1979

SUBJECT: Case Preparation (Work Product)
A. L. Taylor Hearing

The closest analogy to the A. L. Taylor case we have, (i.e. a situation where the solution requires such economic input that the entity responsible cannot begin to supply a solution) is the Marion County situation which was handled by Jack Wilson without attorneys. That situation was finally concluded with a cleanup by Inmot Corporation of Cincinnati, Ohio and Inmot declared they were participating in what they called "a resolution through pooling of collective resources while admitting no legal liability."

What we are doing with tomorrow's hearing generally is showing a history and present status report of the site, not attempting to go into Mrs. Taylor's situation, that is, not pressing a charge against her or the estate this session. I don't believe we could logically get to it at any rate within the time limits.

Two options are apparently at stake at the present time for the future of the site. Secretary Mooney obviously wants a hearing in order to keep pressure on the generators to assume their "corporate moral responsibility" and to hold off EPA



000114

from any rash legal action that would destroy the present options for a solution that are available. The case against the generators would be precedent setting, it would be a long fully appealed fight not allowing any immediate corrections at the site. It has apparently been in EPA's favor, (This is my personal impression) to make the state look as bad as possible and the situation look as hazardous as possible since either of these appearances promotes their ability to ~~give~~ ^{gain} political support (or shows the need for political support) in Washington for increased funding. Presently this increased funding is in the form of a multi-million dollar trust fund for cleanup of hazardous waste situations; especially situations like Taylor's that have been abandoned for all intents and purposes. It is also in the favor of the newspapers since all this makes good press; Basically, it is in the newspapers' advantage to oversensationalize the situation.

At any rate it is a very bad situation both in terms of hazardous waste problems, solid waste problems and most clearly water pollution problems and no one that knows anything about it in state government denies this aspect. The most talked about solution involves emergency public money with the generators as a concurrent possibility for solution. We must keep this combined option open ~~and not settled~~ until Mooney's "preferred option" (my title) is settled one way or another.

The other option ("preferred option") is to have Mr. Fluhr of Liquid Processor's Inc. purchase the property from Mrs. Taylor. This would establish his incenerator at the site assuming zoning can be changed to heavy industrial. This possibility is complicated in that the location is next to a golf course owned by L & N and

①
Can't monitor
site pre-
contaminated

②
Liquid processor
Requires
200-300
acres

No Bullshit
County wide
zoning

the Bullitt County Grand Jury is presently in session analyzing this situation and "looking for somebody to blame it on". However, besides offering a solution for the Taylor situation, location of an incenerator here would solve two other problems. The first, establishing the incenerator anywhere. At present Mr. Fluhr has had a great deal of public resistance getting his incenerator established at any location in the state. We are having a hearing the evening of April 6 in Bardstown to listen to the complaints of the Nelson County residents regarding establishing any hazardous waste disposal facility in their area. The resentment to a hazardous waste incenerator is for all the wrong reasons. The state needs to establish incenerators. Situations like the valley of the drums are a result of lack of proper disposal facilities. We have only two in the state at present, Liquid Waste Disposal run by George O'Brien and Amos Shelton's incenerator located outside of the ^{Calverton City} Louisville area. We have no hazardous waste disposal sites. This amounts to having no good disposal sites for liquid flammable wastes, a great part of which are found at both the Taylor site, the brickyard site and a number of other problematic hazardous waste locations. The second solution that might be offered by establishing Mr. Fluhr's incenerator at the Taylor property would be to burn the flammable liquids that are presently improperly stored at the Hardin County Brickyards. Mr. Distler does not have the money for this disposal. Mr. Fluhr owes Mr. Distler for the incenerator and will dispose of those materials in partial payment for his debt. ^{claimed}

It is feared that too much exposure (EPA included) will ruin either delicate option. However, these are the only visible solutions. Others are possible (i.e. special money grants) but not probable and certainly not quick enough to respond to the situation.

Mr. Fluhr is connected with Mr. Distler and this is common knowledge. Therefore Commissioner Roark and most of his staff people and all of his field people generally are against it. There is a strong possibility that the sale will not be made since it involves such complex negotiations anyway, and there is a possible problem with federal liens being placed on the property due to their input through emergency cleanup funds to date. If this opposition means the "preferred option" can't work, The "generator solution" and hoping for public funds must suffice. In this event the Department cannot depend on this being enough and the Taylor estate should make up the difference. If the opposition does not prevent the "preferred option", then we can proceed with disposal arrangements that appear pragmatic: (1) the geology of the site is by a lucky break more than adequate for a landfill properly operated, crushed empties and acceptable solids can be buried on location. (2) Certain barrels could be claimed and returned to the now improved waste stream disposal methods of some of the generators showing corporate moral/public responsibility. (3) Some of the empties are resellable, and at any rate burnable solvents are valuable to starting up any incenerator. These burnable solvents can be batch tested fairly inexpensively. Mr. Fluhr is getting a balance for his other testing expenses in the deal.

Chlorinated Hydrocarbons → w/o scrubbers
cannot burn since
acc. HCl discharge

(4) The solids can be burned and buried once identified by generators. (5) Other solids can be batch tested and dealt with accordingly (and burnt or buried there).

PCB
related
Coating
Materials
BOB FOX
Environmental
Consultants

Although this whole situation involves cooperating with Mr. Fluhr and indirectly cooperating with Mr. Distler, an obviously unpopular position, the people of Bardstown will be relieved in that no incinerator will be located in their area. Two of Bullitt County's major area problems will be gone (the brickyards and the Taylor situation) but they will have inherited a possibly new problem if the Commissioner and other members of the Bureau's fears are founded. However, there is no "legal" method by which that can be examined until Mr. Fluhr violates a statute. This is merely speculative and there is always the possibility that this will be a solution without further problems.

Someone now at least would be liable for further problems

The PCB tests can have various influences on this situation.

If the frozen fish analysis that is due to be returned from Atlanta shows that the "significant" amounts of PCB's in

the stream have built up in the biological system and that the amount of PCBs on site are dangerous, then batch testing to isolate this source will be much more complicated and

possibly impossible. This could influence Mr. Fluhr's desire to purchase the property. It could influence EPA's ^{withholding} involvement,

On the other hand, the acknowledged existence of PCBs should be an incentive to the generator's to do as much as they can to correct their part of the problem now.

The bugs have
PCB's
Stone River Co.
3/25

Variations on described options are still available. The property could still be sold to one or more of the generators or to a third party as an industrial waste disposal site. Any of these arrangements would accomplish the problem of getting Mrs. Taylor out (with something) and getting a responsible and liable operator dealing with the disposal.

up to
5-10 hours
possibly

Burial

180' long
230' wide

16' deep

Isolate
site
& close
it PCBs

In light of the described situation I plan to present this case as honestly and clearly as possible as to the various plans for a solution without going into sufficient details so as to upset the delicate options. There are generator negotiations going on. There is an effort to sell the property. I plan to stipulate that Mrs. Taylor individually is not morally responsible although she is technically responsible only under the disposal definition and due to her technical legal possessory and control powers of the property. This does not appear applicable in equity to me and is not the kind of enforcement normally sought by the Department. I would therefore wish to stipulate (or characterize) any remedy against her individually be applied to her in the nature of a specific performance for intermediate abatement within the limits of her available resources. No technical money penalties that are requested in the technical complaint should go to her individually. However, the estate liability ^{involves} ~~is~~ a claim against an entity which ~~has~~ wrongfully gained by these violations of the various environmental laws. In the event of alternative options not solving the problem, the technical request for money penalties against the estate should be brought forward and demanded. This does not mean they cannot be ^{limited to what} ~~only as~~ appears necessary and just to supplement public funds or generator cooperation in cleaning up the situation and it does not mean ~~that they cannot~~

~~be sold~~ these liabilities cannot be sold along with the property (lis pendens) getting Mrs. Taylor out of the situation. A Lis pendens ~~claim~~ claim should be filed against the property pursuant to this approach. It should also be noted that although Mrs. Taylor is not technically the personal representative of the estate at this stage (since the Will has not been probated) that logic demands that she is de facto one entity, the personal representative of the estate, the person with a quick claim against the rest of the world as to possession of this property, the heir and/or devisee of the property. Mr. Bowers has orally agreed to probate the Will eventually and not to object ~~to~~ to Mrs. Taylor's "premature" naming as personal representative of the estate.

- ① Mooney has instructed generator subpoenas be quashed + this was accomplished by stipulation; Reasons (a) voluntary submission of records in usable form - much less cumbersome than piecemeal discovery, if it works (b) Gives generators a chance to come out of advocate position and provides a starting point to follow w/ voluntary on-site correction of the problem (c) Removes self-incrimination defense possibility should last resort necessity of making generators defendants;
- ② Mooney has instructed not to file lis pendens on property, without clear explanation. Assume it does not fit with "sale/establish incinerator" approach + does not balance ^{solution} strategy-wise although I feel it appropriate within the bounds of legal strategy.